



State of Vermont
Office of the Secretary of State

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James C. Condos, Secretary of State
Christopher D. Winters, Deputy Secretary

September 3, 2021

Hon. Mark MacDonald, Chair
Legislative Committee on Administrative Rules
Vermont State House
Montpelier, Vermont 05602

RE: Modifications to final proposed rule.

Dear Chairperson MacDonald and Members:

After the close of the deadline for comment and submitting the final proposal to LCAR, the Secretary of State received comments from Anthea Dexter-Cooper regarding technical and grammatical inconsistencies within the filing. This agency intends to correct the inconsistencies by making the following modifications upon filing the adopted rule.

A text highlighting the modifications described below accompanies this correspondence for your convenience:

Section 1 ¶ 1: a second symbol character will be added to precede the range of sections of statute cited.

Section 3 ¶ 1: for enhanced readability, the word “be” will be changed to “include” and a previous edit will be removed in the first paragraph.

Section 3 ¶ 2: the word “statute” and bracketing around the citation will be removed for consistency with other statutory citations within the rule.

Section 4 ¶ 1: while evaluating the inconsistencies, an inaccurate sentence was discovered and it will be removed. The sentence indicates that notices will remain posted online until two weeks after adoption... this is inaccurate. The notices remain posted indefinitely and are searchable; they just are not visible from the “Recent” list.

Section 4 ¶ 3: the words “two full weeks” will be changed to “14 calendar days” and the number will be reflected as a numeral as it is a number higher than ten. Also the days are being specified as calendar days and not business days.

Sincerely,

Chris D. Winters
Deputy Secretary of State

**RULE ON RULEMAKING
OFFICE OF THE SECRETARY OF STATE**

2021

Section 1. Introduction.

This rule is required by 3 V.S.A. § 847(e) for the effective administration of 3 V.S.A. Chapter 25. It applies to every agency of state government adopting rules under the Vermont Administrative Procedures Act (APA). For a fuller understanding of the rulemaking process, consult 3 V.S.A. §§ 801 - 849 and the rules of procedure of the Legislative Committee on Administrative Rules (LCAR). For the purpose of the Rule on Rulemaking, the filing of any new rule, amendment, or repeal of an existing rule shall be described as a rule.

Section 2. Filings.

The APA requires agencies to make filings of every new, amended, or repealed rule at least four times during the rule making process.

2.1 Prefiling

The first filing is the Prefiling with the Interagency Committee on Administrative Rules (ICAR). This begins the rulemaking process.

2.2 Proposed

The second filing is the Proposed Rule with the Office of the Secretary of State. This begins the notice and public comment period.

2.3 Final Proposed

The third filing is the Final Proposed Rule, which is filed with the Office of the Secretary of State and LCAR. This signals the end of the notice and public comment period.

2.4 Adopted Rule

After LCAR review, the fourth and last filing is the Adopted Rule (filed with both the Office of the Secretary of State and LCAR), which marks the beginning of the minimum 15-day period required by 3 V.S.A. § 845(d) for the effective date of the rule.

All filings with the Office of the Secretary of State shall arrive no later than 3:30 p.m. on the last day of the scheduled workweek.

2.5

Section 3. Forms

Agencies must use the forms published by the Office of the Secretary of State; altered forms will not be accepted. All forms requiring the signature of the adopting authority to be filed with the Office of the Secretary of State shall **be include** an original signature or, if **the form is** filed electronically with the Office of the Secretary of State, a conformed signature.

“Conformed signature” means a typed signature on a form provided by the Office of the Secretary of State that is submitted electronically to the office Office of the Secretary of state State for filing. The Secretary of State will accept forms electronically submitted for filing if all of the following conditions have been met:

1. Full name of person who signed the original form is typed in this format: /s/ Name of Person;
2. Form is submitted electronically in the file format and in the manner prescribed on the form; and

3. Form with the original signature of the adopting authority is retained by the adopting authority as required by ~~statute~~ [3 V.S.A. § 843(e)].

The forms are available for download from the Office of the Secretary of State's website. Due to compatibility issues use the forms in the formats in which they are provided. The forms include:

1. Proposed Rule Filing provides information about the proposed rule for the required notice.
2. Final Proposal Filing delineates any changes from the proposed rule.
3. Adopted Rule Filing, lists the procedural history of the rule and indicates that the rule has been reviewed by LCAR, has been adopted by the agency, and assigned an effective date.
4. Adopting Page provides information about the type of filing submitted and whether it is a new rule, an amendment, or a repeal of an existing rule and if so, what those existing rules are.
5. Economic Impact Analysis explains the expected economic impact of the rule.
6. Environmental Impact Analysis explains the expected impact the rule will have on greenhouse gases if it is adopted.
7. Scientific Information form identifies the scientific information upon which the rule has been based and explains the procedure for obtaining such studies and underlying research data from the agency if the rule depends on scientific information for its validity.
8. Public Input form outlines the agency's plan to maximize public input.
9. Incorporation by Reference form explains the material to be incorporated, and where it can be obtained and at what cost.
10. Emergency Rule Filing replaces the Proposed Rule Filing for Emergency Rules.

If the Office of the Secretary of State finds that a filing meets statutory and regulatory requirements the rule will be accepted for filing. The Office of the Secretary of State will notify an agency of any defects in a filing within 3 business days from receipt.

In addition to the appropriate forms, an agency must also submit the text of the proposed or adopted rule and an annotated text showing changes from any existing rules. Submitting a paragraph or page of a larger rule is not sufficient and a complete annotation is required. A new proposed rule need not be accompanied by an annotated text.

Section 4. Public Notice.

Notices of completed filings of proposed rules received by 3:30 p.m. on the last day of the scheduled workweek will be posted online the following week. Links to the notices will be available on the Secretary of State's APA web pages and the notices will appear in the newspapers of record the week following the posting of the online notice. ~~Notices of proposed rules will remain posted online until two weeks after adoption of the proposed rule is complete.~~

When an agency needs to hold a new hearing, reschedule a hearing, or extend the public comment period, the agency must notify the Office of the Secretary of State and must notify by mail all individuals who have contacted the agency about the rule. The Office of the Secretary of State shall amend the notices to reflect the changes in hearing and deadline for public comment.

When a public hearing has not been scheduled, an agency shall set a deadline for public comment not less than ~~fourteen~~ 14 calendar days following the publication in the newspapers of record.